IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27/02/2003

CORAM

THE HONOURABLE MR.JUSTICE V.S.SIRPURKAR
AND
THE HONOURABLE MR.JUSTICE F.M.IBRAHIM KALIFULLA

WRIT PETITION No.2424 OF 1998
AND
W.M.P.NO.3589 OF 1998

1. D.Sriramulu
2. M.I.Mohamed Khaiyum
3. R.Jagadeesan
4. S.Anbu Selvam
5. K.Syed Razack .. Petitioners

-Vs-

1. The Registrar
Tamil Nadu Administrative Tribunal,
Chennai-104.

2. The Director General of Police,
Chennai-600 002.

3. The Commissioner of Police,
City Police Office,
Egmore, Chennai-8.

4. The Deputy Inspector General of Police,
Chengalpet Range,
Chennai-18.

5. S.Gurusamy
S.I. Of Police,
E.1 Mylapore Police Station,
Chennai-4. .. Respondents

For Petitioner :: Mr. M.Venkatachalapathy, SC
for Mr.M.Sriram

For Respondents :: Mr. P.Chandrasekaran,
Spl.GP.-R2 toR4

:ORDER

F.M.IBRAHIM KALIFULLA, J.
The petitioners are Sub Inspectors of Police in the State Police Service. The challenge in this Writ Petition is to the order of the Tamil Nadu State Administrative Tribunal, dated 7-8-1987 in O.A.No.4649 of 1997, as well as, to the order of the second respondent dated 24-7-1996 in RC.No.75699/NGB-I(1)/96 dated 24-7-1996, to quash the said orders with a further direction to the second respondent to include the petitioners in the 'C-List' of 1985 and accord all further promotion to the post of Inspector of Police with all attendant benefits like seniority, etc.

2. The petitioners who are five in number, joined as Grade-I Constables in the year 1972 and got promoted as Head Constables during the years 1980 and 1981. By an order dated 15-9-1987, they were promoted on a temporary basis to the category of Sub Inspectors under Rule 15(a) of the Special Rules for the Tamil Nadu Police Sub-ordinate Service. It is relevant to mention that under para 2(ii) of the said order, it was specifically mentioned therein that they will have no right to claim regularisation of service in the category of Sub-Inspector of Police from the date of their temporary promotion as Sub Inspector. Prior to the passing of the above said order dated 15-9-1987, by a memorandum dated 28-11-1985, all the Head Constables who were working in the Madras City Police were directed to appear for the written test to be held on 2-12-1985 for the purpose of drawal of 'C' List of Head Constables fit for promotion as Sub Inspectors of Police in the year 1985. It is common ground that the petitioners along with others who were eligible to appear, appeared for the written test. Among those Head Constables who participated in the promotion test held in 1985, 60 Head Constables who had secured 61 per cent of marks and more were included in the 'C' List drawn in CPO No.20 of 1986 dated 4-1-1986. Subsequently, two others were also included in the said 'C' List of 1985 and thereby the total number of Head Constables who were included in the 'C' List of 1985 became '62'.

3. Be that as it may, certain other Head Constables who neither participated in the promotion test nor whose names got included in the ' C' List of 1985, by fortuitous circumstances, came to be promoted as temporary Sub Inspectors on out of seniority basis and were working as such for more than two years as of the year 1989. They were all reverted for want of vacancy while posting directly recruited Sub Inspectors of Police who joined duty after training. Such of those temporary Sub Inspectors who faced reversion, approached the Tamil Nadu State Administrative Tribunal by way of Original Applications. Various applications so filed were all grouped together and were disposed of by a common order dated 22-12-1989 in O.A.No.694 of 1989 etc., wherein, the Tribunal held that such of those applicants who appeared before the Madras City Police Range Promotion board, though failed to get the minimum marks, by virtue of the factum of posting as Sub Inspectors and also by virtue of their long functioning as Sub Inspectors, became entitled to be retained as Sub Inspectors and they need not wait for their turn to be included in the 'C' List. The Tribunal accordingly, directed that all those petitioners should be placed below those who were regularly included in the 'C' List of Head Constables found fit for promotion as Sub Inspectors

in the respective units, with a further direction that amongst them, the seniority should be worked on the basis of the seniority obtained by them in the feeder category.

4. Several other Head Constables who were also promoted as temporary Sub Inspectors on out of seniority basis, who were more or less similarly placed like that of the applicants in O.A.No.697 of 1989 etc., filed several applications before the Tribunal, seeking for similar directions like the one granted in O.A.No.694 of 1989. At one point of time, the Tribunal considered that it would be desirable if the matter is considered by a Full Bench of the Tribunal and accordingly, four issues were framed to be considered by the Full Bench of the Tribunal and accordingly, four issues came to be considered not by a Full Bench, but by a Division Bench of the Tribunal in O.A.No.2176 of 1991 , etc. By an order dated 7-8-1992, the entire batch of Original Applications which were all grouped together and titled as Police (O.S.S.I.) Batch Cases were disposed of and certain directions came to be issued. For the present purpose, direction No.(i) alone is relevant for our consideration, which reads as under:
"(i) Persons who have got more than 50% of the marks in the 1985 test and therefore had qualified for promotion though not included with reference to the number of vacancies as then estimated will also be included in the 'C' List of 1985, and their seniority will be fixed on the basis adopted in fixing seniority for persons included in the List, but after those already included."

5. Pursuant to the said direction of the State Administrative Tribunal in its order dated 7-8-1992 in O.A.No.2176/91, etc., Madras City Police Range Promotion Board in its proceedings dated 24-2-1993 passed orders holding that out of the 260 Head Constables who participated in the promotion test in the year 1985 as 63 Head Constables had already been included in 1985 'C' List and the case of 188 Head Constables who were available as on that date was reviewed and of whom, 176 Head Constables as shown in the Annexure-1 to the said proceedings dated 24-4-1993 was included in the 'C' List of Head Constables fit for promotion as Sub Inspectors for 1985. The order of inclusion was based on the aggregate marks obtained by them in the promotion test. Their seniority was also provisionally determined as show in the Annexure-1. In the said Annexure, the names of the petitioners appeared in Sl.Nos.121, 123, 124, 129 and 130.

6. Subsequently, the second respondent herein in proceedings No.RC. No.75699/NGB-I(1)/96 dated 24-7-1996 directed the Range Promotion Board to consider for promotion, the case of all the Sub Inspectors of Police directly recruited or regularly promoted up to and inclusive of 30-9-1987 with a further direction, that while fixing the seniority of rank promotee Sub Inspectors of Police Services rendered on out of seniority basis, should on no account be taken into consideration. It was directed that the date of promotion as Sub Inspector of Police alone should be taken for fixing the seniority in the rank of Sub Inspector of Police. Aggrieved against the said direction contained in the Memorandum dated 24-7-1996 of the second respondent, several applicants including the petitioners moved the State Administrative Tribunal by way of Original Applications. The petitioners herein filed O. A.No.1663 of 1997 which was one among the several Original

Applications preferred before the State Administrative Tribunal.

7. By a common order dated 7-8-1997, the Tribunal disposed of the said O.A. 1663 of 1997 along with the other O.As., holding that in the previous order of the Tribunal dated 7-8-1992, the issue relating to seniority of applicants vis-a-vis the direct recruits was never focused for determination, that the direct recruits had entered service as early as on 18-9-1987 while the petitioners got included in the 'C' List only pursuant to the subsequent order of the Tribunal dated 7-8-1992 in O.A.No.2176 of 1991 etc., and therefore it was futile on the part of the applicants namely, the petitioner s, to claim that even though they were not regularly appointed, their continuance will clothe them with the right to be considered for seniority and further promotion. Aggrieved against the same, the petitioners have come forward with the present Writ Petition.

8. Mr.M.Venkatachalapathy, learned Senior counsel appearing for the petitioners, while attacking the order of the second respondent dated 24-7-1976 which was also confirmed by the first respondent Tribunal in the petitioners' O.A.No.1663 of 1997, after referring to the earlier order dated 22-12-1989 of the State Administrative Tribunal in O. A.No.694 of 1989, as well as the order dated 7-8-1992 in O.A.No.2176 of 1991 etc., and also the order dated 24-4-1993 of the Range Promotion Board, contended that having regard to the relief granted in those orders of the Tribunal, as well as, the Range Promotion Board, the petitioners' appointment to the post of Sub Inspectors of Police by virtue of inclusion of their names in 'C' List of 1985, their status in that post should be considered on par with those 61 Head Constables who came to be appointed after their inclusion in the 'C' List of 1985 by proceedings dated 4-1-1986. According to the learned Senior counsel when once the petitioners who secured more than 50 per cent of marks in the promotion test held in 1985 were found to be fully eligible for being included in the 'C' List of 1985 along with 61 others who also participated in the 1985 promotion test for 'C' List, the petitioners cannot be treated differently when it comes to the question of their seniority for the purpose of inclusion of their names in the 'C' List of Sub Inspectors fit for promotion as Inspectors of Police for the year 1996-97.

9. According to the learned Senior counsel, by virtue of their functioning as Sub Inspectors of Police right from 15-9-1987, they would steal a march over the directly recruited Sub Inspectors of Police who came to be appointed on 18-9-1987 and whose appointment would take effect after completion of their probation. The learned counsel heavily relied upon para 29(i) of the Tribunal's order dated 7-8-1992 in O.A.No.2176 of 1991, wherein, the Tribunal has held as under:
"(i) Persons who have got more than 50% of the marks in the 1985 test and therefore had qualified for promotion though not included with reference

to the number of vacancies as then estimated will also be included in the 'C' List of 1985, and their seniority will be fixed on the basis adopted in fixing seniority for persons included in the List, but after those already included."

10. By relying upon the above said passage, the learned counsel would

contend that when once the petitioners are to be treated on par with 61 other Head Constables who got selected by virtue of their inclusion in 'C' List of 1985, the petitioners cannot be treated differently when it comes to the question of construing their seniority for the purpose of inclusion of their names in the 'C' List of Sub Inspectors of Police for the year 1996-97. The learned counsel relied upon 2000(7) SCC 399 (R.HARIHARAN & OTHERS versus K.BALACHANDRAN NAIR & OTHERS) in support of his submission that when an ad hoc appointment was followed by regularisation, counting of the pre-regularisation period towards seniority should be the rule."

11. While considering the case of the petitioners, it will also be relevant to refer to some of the Special Rules governing the Madras Police Subordinate Police Service. Under the said Rules, under Rule 1(1) who can be considered as 'a person appointed to the service' has been defined to mean, "A person is said to be "appointed to the service" when in accordance with these rules or in accordance with the rules applicable at the time, as the case may be, he discharges for the first time the duties of a post borne on the cadre of the service or commences the probation, instruction or training prescribed for members thereof."

12. Under Sub Rule (2) and (3) of Rule (1), "Approved Candidate" and "Approved Probationer" have been defined to mean as under:
"Approved candidate" means a candidate whose name appears in an authoritative list of candidates approved for appointment to any class or category of the service.
"Approved probationer" means a member of the service who has satisfactorily completed or is deemed to have completed, his probation and awaits appointment as a full member in any class or category of the service."

13. Under Sub Rule (7) of Rule 1, 'Full member' has been defined to mean as under:
"Full member" means a member of the service who has been appointed substantively to a permanent post borne on the cadre thereof."

14. Rule 3 deals with the "Method of appointment and promotion to several classes and categories."

15. Under Rule 3(b)(i), it is stipulated that promotion to various posts including Sub Inspectors should be made on grounds of merit and ability, seniority should be considered only where merit and ability are approximately equal.

16. Under Sub Rule 3(b)(ii)(b), it is stipulated that such promotions should be made from a list of qualified Grade-I constables for promotion prepared and finalised by the Range Promotion Board constituted in various units.

17. Sub Rule 3(c) prescribes that the Range Promotion Board constituted for the purpose, after holding a written examination and vivavoce including a Drill Test, should list those who came out successful at the written examination, and select the men for the training prescribed under Rule

18.

18. Rule 15(a) prescribes the manner in which temporary promotions are to be made, which specifically provides,
".... A member temporarily promoted under this rule, shall not, by reason only of such promotion be regarded as a probationer in the category or grade to which he has been promoted or be entitled to any preferential claim to future promotion. The services of a member promoted under this Sub-rule shall be liable to be terminated by the appointing authority at any time

without notice and without any reason being assigned."
19. Rule 18(a) stipulates that probationers should undergo some specified training and examination within the period of their probation.

20. Under Rule 19, the Appointing Authority is vested with the power to consider the probationer's suitability for full membership of service in the category for which he was selected at the end of the prescribed or extended period of probation, as the case may be.

21. Under Rule 25, how the seniority of a person in any class or category or grade should be determined has been provided. According to which, it should be determined by the date of his first appointment to such class, category or grade. It also specifically provides that if any portion of the service of such person does not count towards his probation under Sub Rule (a) of Rule 15, His seniority should be determined by the date of commencement of his service which counts towards probation.

22. Thus on a conspectus reading of the above stated Rules, it is clear that in order for a person in the Madras Police Sub-ordinate Service to claim seniority, the relevant date would be the date of his first appointment to such class or category or grade and that a person who was temporarily promoted to a class, category, grade or post cannot be regarded as a Probationer in that category or grade, to which he has been temporarily promoted or entitled to any preferential claim to future promotion. Further in order for a person to aspire for promotion to a higher post in the Subordinate Service, his name should find a place in the select list to be sent as a probationer for appropriate training as prescribed under Rule 18 by the concerned Promotion Board.

23. By keeping in mind the above said stipulations contained in the relevant rules, when the case of the petitioners is analysed, we find that though the petitioners participated in the Promotion Test of ' C' List of Head Constables of 1985 for promotion to the post of Sub Inspector of police, by virtue of the number of vacancies available as on the relevant year though the petitioners secured more than 50 per cent of marks in the written test, they were not included in the select list of the year 1985. In fact, 61 other Head Constables who secured higher marks than the petitioners, came to be included in the select list by the proceedings dated 4-1-1986 who were all sent for training as approved probationers under Rule 18 of the Special Rules.

24. It is common ground that between 1979 and 1986, there was no

direct recruitment to the post of Sub Inspector of Police. It is also not in dispute that the ratio of direct recruits and promotees to the post of Sub Inspector of Police originally stood at 70:30 which was modified as 60:40 and was further modified as 50:50 from the year 1985 onwards. As the number of posts were lying vacant, it appears that several temporary promotions under Rule 15(a) came to be made to man the posts, apparently in the interest of public at large. The petitioners were few of the such fortunate persons who happened to be promoted on a temporary basis to the category of Sub-Inspector of Police under Rule 15(a) of the Special Rules, by proceedings dated 15-9-1987. However, in para 2(ii), it was specifically provided in the said order dated 15-9-1987, that they will have no right to claim regularisation of service in the category of Sub Inspector of Police from the date of their temporary promotion as Sub Inspector of Police. This stipulation was inconsonance with Rule 15(a) itself.

25. Be that as it may, certain other persons who were also posted as Sub-Inspectors of Police prior to the posting of the petitioners, who did not even qualify for inclusion of their names in any of the 'C' Lists either in the year 1985 or in the subsequent years, were able to get a direction from the State Administrative Tribunal in O.A.Nos.694 of 1989,etc., in the order dated 22-12-19 89, to be retained as Sub Inspectors of Police, when they were sought to be reverted. The Tribunal also held that they need not wait for their turn for inclusion in the 'C' List and that they should be placed below those who were regularly included in the 'C' List of Head Constables found fit for promotion as Sub Inspectors in the respective units. In other words, such relief granted by the State Administrative Tribunal was referable to the 'C' List of 1985. It was in those circumstances, when the subsequent O.A.No.2176 of 1991, etc. came to be disposed of by the Tribunal's order dated 7-8-1992, it was specifically provided in para 2 9(i) to the effect that those persons who secured more than 50 per cent of the marks in the year 1985 promotion test, and who had qualified for promotion though not included due to want of vacancies, should be included in the 'C' List of 1985 and their ranking to be assigned immediately after those who were not only qualified for the said promotion, but fortunate enough to get themselves selected by virtue of the number of vacancies available then.

26. In the above said background, the Range Promotion Board passed orders on 24-4-1993 in compliance of the State Administrative Tribunal's direction as contained in para 29(i) of its order dated 7-8-1992 including as many as 176 Head Constables including the petitioners in the 'C' List of Head Constables fit for promotion as Sub Inspectors of Police for 1985. By issuance of the said proceedings, what all the petitioners could validly claim and gain was that their temporary promotion ordered by proceedings dated 15-9-1987 under Rule 15(a) of the Special Rules, came to be finally approved to the limited extent of ensuring their seniority amongst the promotees to be fixed in the appropriate place without giving any scope for any anomalies vis-avis to such of those Head Constables whose reversion was set at naught and whose names were directed to be included in the 'C' List of Head Constables below the list of Head Constables found fit for promotion as Sub Inspectors in the respective units.

27. It will have to be stated that at the time when the above said relief came to be granted on 22-12-1989, the petitioners were also functioning as Sub-Inspectors of Police by virtue of the proceedings dated 15-9-1987 temporarily promoting them as Sub-Inspectors of Police under Rule 15(a) of the said rules. In other words, the petitioners' names were not included in the 'C' List of 1985 though they secured more than 50 per cent of marks thereby making them eligible for inclusion of the select list, but factually not included for want of vacancies. It was to set right the said anomalous situation which would be created by the earlier orders of the Tribunal dated 22-12-1989 which if implemented, would allow even ineligible persons to be included in the 'C' List, who would steal a march over the petitioners who were really qualified for being included in the 'C' List, but not included as such for want of vacancies in the year 1985. Therefore, by the subsequent order of the Tribunal, dated 7-8-1992, the said anomalous situation prevailing in regard to persons like that of the petitioners, the relief came to be granted in para 29(i) in the order dated 7-8 -1992. The second respondent also carried out the relief so granted by the Tribunal by its proceedings dated 24-4-1993. In such circumstances, there is no scope for granting any other relief than what had already been granted to the petitioners by the Tribunal in its order dated 7-8-1992 and also in the subsequent proceedings of the second respondent dated 24-4-1993.

28. Beyond the above said relief, if the petitioners' aspirations to steal a march over the directly recruited Sub Inspectors who came to be appointed on 18-9-1987 in the regular vacancies are to be countenanced, then that will amount to violating the Special Rules relating to appointment of probationers to a class of service, in particular, contrary to the seniority to be determined under Rule 25 of the Special Rules which specifically provides that service of any such person who came to be appointed under Rule 15(a) should not be counted for the purpose of seniority.

29. As far as the judgment of the Hon'ble Supreme Court relied upon by the learned senior counsel for the petitioner reported in 2000(7) SCC 399 (R.HARIHARAN & OTHERS versus K.BALACHANDRAN NAIR & OTHERS), the same is clearly distinguishable from th se of the petitioners. That was a case, where, when the persons were appointed on ad hoc basis or under fortuitous circumstance, a specific stipulation was made to the effect that on acquiring necessary qualifications as specified in the order of appointment, their services would be regularised and as a matter of fact, the persons concerned acquired necessary qualification which resulted in the regularisation of their service with effect from the date of their joining. Therefore, the Hon'ble Supreme Court, on finding that such regularisation was in accordance with Rule 27 of the relevant rules, held that counting of the preregularisation period towards seniority was justified. Such is not the case in the case of the petitioners herein, where, the relevant rule relating to seniority was diametrically different from the one concerned in the judgment relied upon by the learned senior counsel for the petitioners. Therefore, the said judgment has no application to the facts of this case.

30. Having regard to the above said conclusion on the right of the petitioners in regard to their claim for seniority over direct recruits of the

year 1987, we are unable to find fault with the proceedings of the second respondent dated 24-7-1996 as well as the impugned order of the Tribunal dated 7-8-1997 in O.A.No.1663 of 1997 preferred by the petitioners. We, therefore, do not find any merit in this Writ Petition. The Writ Petition, therefore fails, and the same is dismissed. However, in the circumstances of the case, we make no order as to costs. Consequently, W.M.P. is closed.

(V.S.S.,J.) (F.M.I.K.,J.)

Index: Yes
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